No.

IN THE

Supreme Court of the United States

Daniel Crowley,
Petitioner,
Versus,

Donald McKinney and Berwyn South School District #100,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Supreme Court of the United States has held that the protected right of liberty includes a degree of control over a child's education. In the present case, the State through the agency of a local school district and its principal, has effectively terminated a non-custodial father's parental rights through measures that deprive him altogether from the most important activity in which children under the age of eighteen engage: their education.

As such, the question presented is:

1. Does a parent loose or forfeit their protected right to be involved in their child's education by way of divorcing their spouse?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties (Daniel Crowley, the *Petitioner*, and Donald McKinney and Berwyn South School District #100, the *Respondents).* Daniel Crowley, the Petitioner, is an individual and has no corporate affiliations.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Daniel Crowley respectfully petitions this Court for a writ of certiorari to review the judgment and decision of the United States Court of Appeals for the Seventh Circuit, entered on March 11, 2005.

OPINIONS BELOW

The opinion of the Court of Appeals, *Daniel Crowley v. Donald McKinney and Berwyn South School District #100*, 400 F.3d 965 (7th Cir. 2005) (per Posner, Circuit J., with Wood, Circuit J., and Evans, Circuit J.) is reproduced in Appendix A. The district court's unpublished Order is reproduced in Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit Affirmed in part, Reversed in part, and Remanded the district court's decision to dismiss for failure to state a claim, the Petitioner's civil rights suit (42 U.S.C. Section 1983). Affirmed was the dismissal of Petitioner's claim that his right to liberty had been violated without due process. On June 13, 2005, under Application No. 04A1046, Justice Stevens granted Petitioner's extension of time to file this petition until August 8, 2005. Rules 13.1, 13.3, 13.5, and 30.1 (2005 rev.)

STATEMENT OF THE CASE

This petition arises from the impact that the lower court has created upon divorced parents and their children by severing a parent's ability to participate and

take part in the most important activity their children will experience: their education.

The petitioner, Daniel Crowley, brought an action against his children's school district and his children's principal for systematically eliminating him from any involvement in his children's education. Daniel Crowley alleged violations of equal protection, free speech, due process, and he brought some collateral State claims. The Respondents filed a motion to dismiss Daniel Crowley's claims for failure to state a cause of action. The trial court agreed with Respondents and dismissed all of Crowley's counts.

Daniel Crowley appealed the trial court's order, and on appeal, the Seventh Circuit affirmed the dismissal of Crowley's claim that the Respondents violated his due process rights, and the appellate court noted that there was no liberty interest that afforded Crowley due process rights to begin with. The Seventh Circuit, however, Reversed and Remanded all other counts for further proceedings.

Daniel Crowley now brings this Petition for Writ of Certiorari to address whether or not a non-custodial parent has a liberty interest in the involvement in a child's education. On June 13, 2005, Justice Stevens granted Petitioner's extension of time to file this petition until August 8, 2005.

STATEMENT OF FACTS

Daniel Crowley is the father of two children; namely Daniel R. Crowley, age 12, and Kelli Crowley, age 11. Their father (hereinafter "Crowley") participated in numerous school events with his children; he volunteered at the school by being a homeroom parent; he was an active Parent Teacher Association (PTA) Member; he was

an active fundraiser; and he often donated needed school supplies.

Crowley's children attended Hiawatha Elementary School in Berwyn South School District #100 and their principal's name was Donald McKinney (the respondents) (hereinafter "School").

At some time after Crowley's active involvement with the School, Crowley became openly critical of the School's ability to protect his son, who was severely beaten on the school playground. Crowley was also critical of the fact that the school did not provide a safe environment. The School responded by dismissing Crowley, and the School then banned Crowley from making any further inquiry. The School would not return Crowley's phone calls and when Crowley went to pick up fund raising materials, the local Police Department was summoned to escort Crowley from school grounds. Crowley's complaint soon followed.

REASONS FOR GRANTING THE WRIT

I. WRIT SHOULD BE GRANTED BECAUSE THE ULTIMATE QUESTION PRESENTED WILL IMPACT EVERY DIVORCED PARENT AND ALL CHILDREN OF DIVORCE.

The core question presented is whether or not a parent forfeits his or her right to exercise a degree of control over a child's education by obtaining a divorce. The Respondent's (hereinafter "School") position is that a non-custodial parent lacks the right of liberty which encompasses degree of control over a child's education. The School's position, however, is fatal because one cannot conclude that "custody" is the core issue in this question presented to the United States Supreme Court.

We know this to be the case because Crowley enjoyed joint rights with his former-wife when dealing with educational issues involving his children. These rights were enumerated within their divorce judgment, and are in addition to identifying Crowley's former-wife as having custody. Therefore, the only reason that the School prevented Crowley from having some degree of control over the education of his children, is because the children simply do not reside with the Petitioner. More accurately, is that the children do not reside with Crowley on a regular basis (as there are times that the children to reside with their father); custody, ultimately, has nothing to do with anything, as the parents in question share joint rights to information and to take part in educational events.

Problematic however is how the lower court's opinion affects all divorced parents in the United States and their children. In essence, the School's position is that when parents are divorced, one of them forfeits or looses their protected right affording them to have a degree of control over their child's education. More vexing is the fact that the more pivotal issue is not whether or not a parent has custody, is it whether or not the children resides with one parent more than with the other parent.

In support of this argument, no one appears to appreciate the likely circumstance where the "custodial parent" is away, and a schooling issue arises. Typically in that case, the non-custodial parent stands in to make the decision involving the school; however, the lower court's decision leaves the School to act as a surrogate with the unfettered ability to make parenting decisions.

In this present case, not only did Crowley have joint rights to information and to take part in educational events, but also, he was already an active participant in many school activities, until he became critical of the School. The overriding issue is whether or not a divorced

parent can be singled out by a school as having lesser rights than the other. The School would like the Courts to believe that the deciding factor is who has custody. However, when the "custodial" parent is away (like on a business trip), does the parent that has the children have any rights at all?

The question then evolves to asking whether or not a parent's ability to retain or forfeit his or her rights to being involved in their child's education sways when a child moves his or her physical being from one parent to the other in the case of parents with shared residential custody or for lengthy stays with mom or dad. Rhetorically, why do rights of Liberty sway in these circumstances in any event?

II. WRIT SHOULD BE GRANTED BECAUSE THE SEVENTH CIRCUIT'S DECISION SEVERS THE PARENTAL RELATION OF ALL DIVORCED PARENTS AND THE FUNDAMENTAL RIGHTS THAT GO WITH IT.

The majority's opinion accurately notes that *Meyer* and *Pierce* "establish the principal that the "liberty" that the due process clauses protect includes a degree of parental control over children's education." However, the majority fails to draw an analogy from Crowley's claim that his liberty has been infringed upon. To the contrary, the majority goes through great pains to distance Crowley's claims from long accepted rights protected by our Constitution. In the end, the majority finds that Crowley does adequately state an Equal Protection claim and he also adequately makes a First Amendment claim; however, the majority fails to see why Crowley's rights to liberty apply in the pending action.

In support of their interpretation as to why "liberty" doesn't apply, the appellate majority focuses on

the notion that Crowley's claim is weaker that those claims in the *Meyer* and *Pierce* cases because Crowley's challenge is that of only "one" parent's control. One would assume that the majority has taken the approach the part is weaker than the whole. More alarming is that the majority comes to the school district's defense by stating the school is actually doing a good by only "denying these opportunities only to one parent, ..." as opposed to denying both parents the opportunities to be involved in their children's schooling.

What is actually confusing within the majority's opinion is the fact that it actually contradicts prior statements made previously in the same opinion. With one stroke of the pen, the opinion notes that denying one parent's rights to be involved in school is acceptable; the next stroke of the pen reads, "Of course divorce does not sever the parental relation and by doing so extinguish the fundamental rights that go with it; the state could not 'divorce' Crowley from his children unless he were a menace to them."

The majority further notes several practical matters that would impact schools and their ability to educate children. The majority notes that the "school does not know what rights of each parent has." Also, they note that it would be impractical to have all parents involved in the manner that Crowley seeks. However Judge Wood in a well crafted dissent, accurately details that Illinois law provides actual notice to the schools of parental rights, and the school did not receive any notice or order to the contrary. Additionally, the impractical result would in fact be true, if and only if Crowley were seeking that type and level of involvement that the majority predicates its decision. Juxtaposed, Crowley only wants information and wants to ensure his children are safe.